

**Abraham Birgani
12604 Blackfoot Trail
Austin, TX 787**

November 20, 2017

**To: Honorable Mayor Steve Adler and
To: Distinguished Council Members: Ms. Ora Houston, Ms. Delia
Garza, Mr. Sabino Renteria, Mr. Gregorio Casar, Ms. Ann Kitchen,
Mr. Jimmy Flannigan, Ms. Leslie Pool, Ms. Ellen Troxclair, Ms. Kathie
Tovo and Ms. Alison Alter.**

Austin City Hall
310 West 2nd Street
Austin, TX 78701

**SUBJECT: ISSUES RELATING TO SECOND PETITION AND
REQUEST FOR POSTPONEMENT**

Zoning case# C14-2017-0042
Case manager: Sherri Sirwaitis
Phone# (512) 974-3057
Sherri.sirwaitis@Austintexas.gov

Property Address: 12602 Blackfoot trail Austin Texas 78729

From: Abraham Birgani (Property owner)

Dear Mayor and Council Members

First, I would to thank you and your staff for taking the time to consider my zoning case. I know in the greater scheme, this is a small case. But for me, it is my lifetime investment (last 27 years of my lifetime earning). As we presented to City Council in the first reading, due to the oppressive past zoning restrictions, my property has been vacant for 14 out of the past 20 years. Even with a favorable outcome of my current zoning case, it is unlikely that I will be able to recoup my investment, but at least I will be able to mitigate the loss.

At the first reading, several council members had discussed the imposition of a conditional overlay prohibiting in all manners the sale of alcoholic beverages on the property. With the input of the city attorney, it was determined the Austin City Code does not allow the sale of alcoholic beverages within 300 feet of a property on which a childcare facility is located. The only exception would be if Austin City Council granted a waiver and the TABC granted a license based on that waiver. I think that all council members agreed that that would be impossible. I agree that if a childcare facility is operating on the adjacent property, there should be no sale of any alcoholic beverages. In fact, I have made that abundantly clear to Ms. Rhonda Paver and Mr. Bill Paver of Stepping Stone Child Care. However, the imposition of a conditional overlay is overkill, and it places an undue burden on me if the adjacent property is no longer used for that purpose. In such case, I would have to again apply for rezoning to have the conditional overlay removed at great expense. I have already spent a King's fortune on rezoning, and it is not fair that I would have to be confronted with that again when the current city code fully protects Stepping Stone or any subsequent childcare facility on that property.

Now, that I am about to finally get some relief, Rhonda Paver with Stepping Stone Child Care has filed a second Petition protesting any zoning change other than LR-MU-CO or GR-MU-CO that would allow for the sale of alcohol. In addition, they and certain neighbors have filed another Petition protesting any zoning change that would: (1) permit the sale of alcohol from a property adjacent to a daycare/private education facility for infants, toddlers, and children, (2) would permit the sale of alcohol from a property adjacent to neighborhood residences, (3) not be necessary to permit reasonable business uses of the property, (4) not satisfy any public need, (5) set an undesirable precedent for other properties in the neighborhood surrounding the property, (6) not promote compatibility with adjacent and nearby uses, (7) result in detrimental impacts to the character of the neighborhood, (8) not promote a transition between adjacent and nearby zoning districts, and (9) not promote any clearly identified community goal.

Regarding Stepping Stone's Petition above - **On April 29, 1985, an Amendment on Restrictions on all Indian Oaks 2 abrogated all prior deed restrictions limiting the property use to residential purposes and allowed property within Indian Oaks 2 to "be used for any lawful purpose" (See EXHIBIT A).** When Rhonda Paver and William J. Paver (founders of

Stepping Stone) obtained title to Lot 3, Indian Oaks 2 on June 19, 1986, they bought it as a commercial property subject to use "for any lawful purpose". Therefore, I view Stepping Stone's Petition in protest of my requested zoning change to anything other than the sale of alcohol as completely baseless and without merit. Regarding the sale of alcohol, Stepping Stone is protected against the sale of alcohol under the Austin City Code. A conditional overlay to that effect is completely unnecessary and overly burdensome on me in the event of a change in use the Stepping Stone property. Finally, Stepping Stone has no standing to complain about any lawful use of my property any more than I would have the same complaint against the lawful use of their property

In short, Stepping Stone, a commercial property owner – not a resident, colluded with several neighbors to constitute a petition protesting almost any lawful and appropriate use of my property when the neighbors themselves would not be able to constitute a valid petition. It is also important to note that the vast majority of complaining neighbors bought their property when the adjacent storage facility was existent and after my property was fully commercial. I expect that at the final reading scheduled for December 7th (2nd and 3rd readings), that certain neighbors will launch a full-out assault on my reasonable zoning request with a slew of requests for restrictions. I implore you not to succumb to this. This goes beyond consideration of reasonable neighborhood concerns into the realm of inverse condemnation.

Thank you again for your consideration of my case! Please feel free to contact me before the final reading. Also, if you have 15 or more minutes, I would like to come in and speak to you in person about these issues and listen to your advice and feedback.

Finally, if your consideration of any existing petition would negatively affect your consideration of my current zoning request, please accept this letter as a formal request for a postponement so I can further discuss these issues with you and the Paver's family and owners of Stepping Stone Corporation.

Sincerely,
Abraham Birgani
Phone# (512) 998-2525



EXHIBIT A

AMENDMENT OF RESTRICTIONS

Vol 1186

STATE OF TEXAS

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18833

KNOW ALL MEN BY THESE PRESENTS:

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COUNTY OF WILLIAMSON

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WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully descibed on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHERPERT and wife, BARBARA SHERPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHERPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 24th day of April, 1985.

Roscoe C. Millegan
ROSCOE C. MILLEGAN

Annie Millegan
ANNIE MILLEGAN

Diana Eichstatdt
DIANA EICHSTATDT

Donald L. Eichstatdt
DONALD L. EICHSTATDT

Richard Bouton
RICHARD BOUTON

Diane Bouton
DIANE BOUTON

Craig H. Shempert
CRAIG H. SHERPERT

Barbara J. Shempert
BARBARA J. SHERPERT

Frank C. Wolchick, Jr.
FRANK C. WOLCHICK, JR.

Dale Barnes
DALE BARNES

STATE OF TEXAS

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COUNTY OF TEXAS

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This instrument was acknowledged before me on April 29, 1985, by